U.S. Department of Labor Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

IN THE MATTER OF:

TIMOTHY HALL,

COMPLAINANT,

v.

EASTERN PANHANDLE ANESTHESIA ASSOCIATES INC., (EPAA), and CITY HOSPITAL, INC., d/b/a BERKELEY MEDICAL CENTER (BMC),

RESPONDENTS.

ARB CASE NO. 2025-0034

ALJ CASE NO. 2023-AIR-00024
ALJ SEAN M. RAMALEY

DATE: July 9, 2026

Appearances:

For the Complainant:
Dr. Timothy Hall; *Pro Se*; Hedgesville, West Virginia

For the Respondents:
Travis F. Salisbury, Esq., and Brad D. Weiss, Esq.; *Charapp & Weiss, PLLC*; Reston, Virginia

Before JOHNSON, Chief Administrative Appeals Judge, and BURRELL, Administrative Appeals Judge

DECISION AND ORDER

This case arises under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21 or the Act)

and its implementing regulations.[1] Complainant worked for Eastern Panhandle Anesthesia Associates, Inc. (EPAA) as an anesthesiologist. EPAA operates under a professional services agreement with City Hospital, Inc., d/b/a Berkeley Medical Center (BMC).[2] Both EPAA and BMC are Respondents in this case. On September 22, 2020, Complainant filed a whistleblower complaint against Respondents with the Occupational Safety and Health Administration (OSHA) alleging that Respondents violated the Act by retaliating against him for reporting safety concerns. OSHA determined Respondents were not covered by the Act and Complainant was not an employee under the Act. Complainant requested a hearing before an Administrative Law Judge (ALJ). Before the ALJ, both Respondents filed motions for summary decision arguing they are not covered under AIR21. The ALJ granted Respondents' motions. Complainant appealed the case to the Administrative Review Board (ARB or Board). For the following reasons, we affirm the ALJ's decision.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the ARB the authority to issue final agency decisions on appeal of matters arising under AIR21 and its implementing regulations at 29 C.F.R. Part 1979.[3] Summary decision is permitted when "there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law."[4] On appeal from summary decision, we review the record on the whole in the light most favorable to the non-moving party.[5]

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[1] 49 U.S.C. § 42121; 29 C.F.R. Part 1979 (2025). In 2020, Congress modified the scope of coverage under the Act by replacing the "air carrier or contractor or subcontractor" language discussed below with "a holder of a certificate under section 44704 or 44705 of this title, or a contractor, subcontractor, or supplier of such holder." Consolidated Appropriations Act, 2021, Pub. L. 116-260, Div. V, Title I, § 118, 134 Stat. 1182, 2337 (2020). However, the events at issue took place before that amendment, so all citations and references to the Act herein are to the pre-2020 version of the statute.

[2] Order Granting Respondents' Motions for Summary Decision and Order of Dismissal (D. & O.) at 1.

[3] Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186 (Mar. 6, 2020); 29 C.F.R. §1979.110(a).

[4] 29 C.F.R. § 18.72(a).

[5] *Jahanbin v. Boeing Co.*, ARB No. 2024-0035, ALJ No. 2023-AIR-00023, slip op. at 4 (ARB Mar. 13, 2025) (citation omitted).

DISCUSSION

Complainant worked for EPAA which provides professional anesthesiology services at BMC under a professional services agreement.[6] He was provided notice of the termination of his employment on or about October 11, 2019.[7] BMC is a part of West Virginia University Health System (WVUHS), a parent healthcare group that operates several hospitals.[8] WVUHS is a partial owner of HealthNet Aeromedical Services (HealthNet), which operates air ambulances between WVUHS hospitals and other facilities.[9] Complainant alleged that he was harassed and his personal information was divulged in the workplace in 2019.[10] Complainant also claimed that a helicopter flown by HealthNet flew at low altitude over his house in 2018.[11] Complainant stated these events were retaliation by BMC in violation of AIR21.

Both Respondents filed a motion for summary decision pursuant to 29 C.F.R. § 18.72, arguing that they were not covered under the Act and therefore Complainant is not a covered employee.[12] Granting the motions, the ALJ concluded that neither Respondent was covered by the Act.[13]

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6 D. & O. at 1.

7 Complainant's Opening Brief (Comp. Br.) at 9. Complainant's final day at Respondent was February 8, 2020. Response Brief of Respondent City Hospital, Inc. d/b/a Berkeley Medical Center in Opposition to Complainant's Opening Brief at 3.

8 D. & O. at 5.

9 *Id.*

10 *Id.* at 1-2.

11 *Id.* at 2.

12 *Id.* at 1.

13 *Id.* at 7-8. Following the motions for summary decision, the ALJ concluded there was no subject matter jurisdiction under the Act. *Id.* at 9. We note the issue is one of coverage not subject matter jurisdiction. Congress assigned AIR21 disputes to the Secretary, and the Secretary's regulations place the hearing adjudication with the OALJ. Coverage disputes like the one at issue are claims-processing matters, not subject matter jurisdiction. *Walker v. Transp. Refrigeration Servs.*, ARB No. 2025-0029, ALJ No. 2024-SOX-00043, slip op. at 6 (ARB Sept. 30, 2025) (citations omitted).

1. Respondents Are Not Air Carriers

Complainant devotes a large portion of his brief on appeal to the alleged harassment he endured while employed at Respondent EPAA. Challenging the ALJ's conclusion on coverage, Complainant cites to the broad regulatory definition of employee and the doctrine of joint employment, but this misses the mark if Respondents are not covered entities under AIR21.[14] AIR21 provides protection for employees engaging in protected activity by providing the following prohibition:

> (a) No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)--
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> (1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;[15]

AIR21's prohibition prohibits **air carriers** and **contractors** and **subcontractors of air carriers** from retaliating on the basis of protected activity. Those key terms are defined in Title 49:

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[14] Comp. Br. at 17, 23; 29 C.F.R. § 1979.101 ("Employee means an individual presently or formerly working for an air carrier or contractor or subcontractor of an air carrier, an individual applying to work for an air carrier or contractor or subcontractor of an air carrier, or an individual whose employment could be affected by an air carrier or contractor or subcontractor of an air carrier.").

[15] 49 U.S.C. § 42121(a).

> (2) "**air carrier**" means a citizen of the United States[16] undertaking by any means, directly or indirectly, to provide air transportation.[17]
>
> (5) "**air transportation**" means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.[18]
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> (25) "interstate air transportation" means the transportation of passengers or property by aircraft **as a common carrier for compensation**, or the transportation of mail by aircraft--. . . .[19]

The key to AIR21's prohibition at the time of the events in this case is "air carrier" status, and the key to that definition is "providing air transportation." "Air carrier" status is a common-law concept derived from the quasi-public common-carrier status.[20] "Air carrier" status is found when entities hold themselves out to

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16 Citizen is defined as:

> (A) an individual who is a citizen of the United States;
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> (B) a partnership each of whose partners is an individual who is a citizen of the United States; or
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> (C) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

Id. at § 40102(15).

17 *Id.* at § 40102(2) (emphasis added).

18 *Id.* at § 40102(5) (emphasis added).

19 *Id.* at § 40102(25) (emphasis added).

20 "The term 'common carrier' is borrowed from the common law and frequently incorporated into federal statutes." *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 763 (4th Cir. 2018). The term generally means "[a] commercial enterprise that holds itself out to the public as offering to transport freight or passengers for a fee." *Id.* (citing Black's Law Dictionary (10th ed. 2014)).

the public as providers of air transportation for hire.[21] The Respondents here are EPAA, Complainant's anesthesiologist employer, and BMC, a hospital. Respondents EPAA and BMC are not air carriers providing air transportation of persons or property for compensation or providing transportation of mail. While an air-ambulance service may be a covered employer under AIR21 as an "air carrier,"[22] HealthNet, the air-ambulance provider, is not a respondent here.

The statute's definition "air carrier . . . undertaking [to provide air transportation] . . . directly or indirectly" does not change the result. The ARB has stated an employer provides indirect air transportation when it owns the air-ambulance helicopters and provides the service even though it does not possess the flight certificate or employ the pilots.[23] Other examples of indirect air carriers include air charter brokers who act as intermediaries between customers and charter operators.[24]

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[21] *Arkin v. Trans Int'l Airlines, Inc.*, 568 F. Supp. 11, 13 (E.D.N.Y. 1982) ("Those entities 'hold out to the public' that they engage in air transportation . . . by selling flights to the general public, . . . by furnishing flights otherwise unserviced by regularly scheduled airlines, . . . or by soliciting 'members of the general public to purchase tickets on the flights it arranges.' The common denominator linking these indirect air carriers is their portrayal and function as providers of travel arrangements and flight transportation.") (internal citations omitted).

[22] *Evans v. Miami Valley Hosp.*, ARB Nos. 2007-0118, -0121, ALJ No. 2006-AIR-00022, slip op. at 8-9 (ARB June 30, 2009); *Air Evac EMS, Inc.*, 910 F.3d at 763 ("[D]ecisions of prior courts and regulators . . . have uniformly treated air ambulance companies as common carriers. . . . The mere fact that [an air ambulance company] does not collect tickets at the boarding gate does not mean that it is not a common carrier as required by the federal statute.") (internal citations omitted).

[23] *Evans*, ARB Nos. 2007-0118, -0121, slip op. at 9 (finding respondent was an indirect air carrier because it owned the helicopters and contracted to provide the service through another entity that possessed the flight certificate and furnished pilots); *see also Cobb v. FedEx Corp. Servs. Inc.*, ARB No. 2012-0052, ALJ No. 2010-AIR-00024, slip op. at 9 (ARB Dec. 13, 2013).

[24] 14 C.F.R. § 295.5(b) ("Air charter broker means a person or entity that, as an indirect air carrier, foreign indirect air carrier, or a bona fide agent, holds out, sells, or arranges single entity charter air transportation using a direct air carrier."), (g) ("Indirect air carrier and foreign indirect air carrier mean a person or entity that, as a principal, holds out, sells, or arranges air transportation and separately contracts with direct air carriers and/or foreign direct air carriers.").

Carrier status attaches to the entity providing the public-facing service, not to the broader corporate structure of affiliated entities. As noted above, EPAA provides anesthesiologist services to BMC. BMC is loosely affiliated with HealthNet by a common link in organizational structure. WVUHS is a partial owner of HealthNet and is also the parent medical group of BMC.[25] But this affiliation does not translate to coverage for Respondents.

In *Cobb v. FedEx Corp. Servs. Inc.*, the ARB held that FedEx Services was an indirect air carrier for FedEx Express because it provided a component of the same air transportation service for hire known as FedEx Express.[26] FedEx had divided the integrated service into different operating segments. Here, HealthNet is the only entity that provides the service of air transportation for hire. The ALJ concluded there was no showing or evidence that BMC was involved in any of HealthNet's activities for air transportation.[27] BMC does not own, operate, or lease the aircraft operated by HealthNet.[28] Respondent EPAA, providing anesthesiologist services, has an even weaker link to HealthNet or air transportation for hire.

2. Respondents Are Not Contractors or Subcontractors Providing Safety-Sensitive Functions

Complainant cites the contractual and business relationship between WVUHS and HealthNet as further evidence of shared air carrier status.[29] Complainant argues the following:

> City Hospital, Inc. dba Berkeley Medical Center is owned by West Virginia University Hospitals (WVUH), i.e., WVUH is part owner of HealthNet. As such, WVUH which

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[25] D. & O. at 5.

[26] *Cobb*, ARB No. 2012-0052, slip op. at 9-11.

[27] D. & O. at 8 ("Even if the two were considered sister subsidiaries, an employer is not subject to AIR-21 jurisdiction as an indirect air carrier based solely on a subsidiary relationship to either a parent or sister company engaged in business with an air carrier. *See Aityahia v. Aviation Academy of America*, ALJ No. 2017-AIR-00029 (2018), *aff'd* ARB No. 2018-0028 (ARB Sept. 12, 2019) (per curiam).").

[28] D. & O. at 6.

[29] Comp. Br. at 17-18.

> includes WVU-Berkeley Medical Center is in fact the air carrier, contractor, and subcontractor of HealthNet.[30]

We disagree. AIR21 extends its prohibition to contractors and subcontractors of air carriers.[31] The Act provides:

> (e) **Contractor defined.**--In this section, the term "contractor" means a company that performs **safety-sensitive functions** by contract for an air carrier.[32]

Respondent EPAA is neither a contractor nor a subcontractor of an air carrier. EPAA has an agreement with BMC, which is not an air carrier. As noted above, EPAA does not have a contract with HealthNet. EPAA and HealthNet are cousins tracing to WVUHS. Moreover, EPAA provides anesthesiology services to BMC, not air-safety services such as repair or manufacturing[33] to HealthNet.[34]

The same is true for BMC. BMC is affiliated with WVUHS, but WVUHS is not an air carrier. WVUHS's status as a partial owner of HealthNet does not transfer HealthNet's carrier status to WVUHS. WVUHS would be an air carrier only if it, too, provided air transportation for hire or carried the mail, not because it is a part owner of HealthNet.[35] Further, BMC, like EPAA, is in the business of

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30 *Id.* at 17.

31 *Supra* note 15.

32 49 U.S.C. § 42121(e) (emphasis added).

33 "'Safety-sensitive functions' under those regulations include flight crewmember duties, flight attendant duties, flight instruction duties, aircraft dispatcher duties, aircraft maintenance and preventive maintenance duties, ground security coordinator duties, aviation screening duties, and air traffic control duties." *Cobb*, ARB No. 2012-0052, slip op. at 7 (citing 14 C.F.R. §§ 120.105, 120.215).

34 The ALJ observed FAA regulations defining "safety-sensitive functions" as including repair and manufacturing services. D. & O. at 6 n.8, 8.

35 *See Union Telecom, LLC v. United States*, 144 Fed. Cl. 477, 488 (Fed. Cl. 2019) ("[A] carrier affiliate is also a carrier only if the affiliate too provides telecommunications services. As explained above, since UTA did not offer telecommunications services, it was not a carrier."); *Greene v. Long Island R. Co.*, 99 F. Supp. 2d 268, 272 (E.D. N.Y. 2000), *aff'd*, 280 F.3d 224 (2d Cir. 2002) ("When determining whether a defendant is a 'common carrier,' [within meaning of FELA] it is not the corporate form of the entity that is

providing medical services, not air-safety services. There is no evidence of a contract between BMC and HealthNet for BMC to provide air-safety services to HealthNet.[36]

CONCLUSION

The Respondents, EPAA and BMC, are neither air carriers nor contractors or subcontractors of air carriers providing safety-sensitive services by contract. Because AIR21's prohibition is limited to air carriers or contractors or subcontractors of air carriers providing safety-sensitive services, Respondents are not covered entities. Accordingly, the ALJ's opinion granting summary decision for lack of coverage is **AFFIRMED**.

SO ORDERED.

THOMAS H. BURRELL
Administrative Appeals Judge

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

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dispositive. Instead, courts look to the actual operations of the entity to determine whether it is operating as a common carrier.") (citation omitted).

[36] D. & O. at 8.